

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885
WWW.COASTAL.CA.GOV



Th5.1&5.2

Staff: R. Modellmog-SF
Staff Report: January 31, 2020
Hearing Date: February 13, 2020

STAFF REPORT: RECOMMENDATIONS AND FINDINGS FOR CONSENT CEASE AND DESIST ORDER AND CONSENT ADMINISTRATIVE CIVIL PENALTY

Consent Cease and Desist Order No.: CCC-20-CD-01

Consent Administrative Penalty No.: CCC-20-AP-01

Related Violation File: V-4-04-018

Entity Subject to These Consent Orders: Tivoli Cove Homeowners Association

Location: Lot 1 of Tract Map 37848, City of Malibu; Property owned by the County of Los Angeles (Assessors' Parcel Numbers 4460-019-902 and 4460-019-903); Property owned by LSD Holdings, LLC (APN 4460-019-024); and public trust tidelands; all of which are defined collectively as "the Properties."

Violation Description: Development inconsistent with CDP No. P-77-2312 and development conducted without a Coastal Development Permit: 1) restricting use of the Public Pathway; 2) failing to provide the required vertical public pathway and stairs over the revetment; 3) failing to repair and maintain the revetment and eastern public stairway as required by the CDP, and allowing boulders, concrete pieces, rebar, and other debris from the revetment and eastern stairway to migrate seaward and east of the revetment, onto public beach and potentially private property, 4) removing required public access signs and replacing those signs with signs that deter public access and deter use by the public of an area deed restricted for public access; and 5) placement

of a unpermitted pillars and a shaded walkway (“the pergola”) in and around the public pathway, vegetation, and “right to pass by permission and subject to control of owner” and other signage, all of which are defined collectively as “the Unpermitted Development.”

Substantive File Documents:

1. Public documents contained in Cease and Desist Order file No. CCC-20-CD-01, Administrative Penalty file No. CCC-20-AP-01, and CDP file No. P-77-2312.

2. Appendix A and Exhibits 1 through 15 of this staff report.

CEQA Status:

Categorically Exempt (Cal. Code of Regs., tit. 14, §§ 15061(b)(2), 15321(a))

SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

This matter involves the failure to provide a public accessway on Latigo Beach, in Malibu, by the Tivoli Cove Homeowners Association (“Respondents”). This right of public access arose decades ago via an accessway required in a Coastal Development Permit (“CDP”). The Commission recognized that Respondent’s revetment, which is essentially a seawall made of stacked boulders, is built on the beach and juts out into the surf, often blocking the public from reaching the other side of the beach, and precludes public access to the beach and precludes the public’s ability to reach the coast beyond this revetment. Therefore, the Commission required a public pathway to be built up and over the revetment so the public could reach the beach on the other side. The Commission’s efforts to provide public access in spite of this revetment are at the heart of this matter. This pathway was provided for a time, but then one of the stairways was destroyed, and Respondent failed to provide and maintain the staircase as required by the permit, and, in doing so, failed to provide the pathway. Instead, Respondent posted signs deterring access, treated the remaining staircase and access path as private, and in addition, allowed boulders and other debris from Respondent’s revetment and former access stairway to wash up on the public beach, blocking access there as well. For decades, Respondent’s violations have continued, and have often resulted in the public being unable to walk to the western end of Latigo Beach. This blocked access has particularly impacted the surfers who visit Latigo Point at the western end of the beach to enjoy the waves. As sea levels continue to rise, the impacts of this revetment and the debris on the beach will only increase.

Latigo Beach is located roughly equidistant between Malibu Pier and Point Dume (Exhibit 1) and is popular with surfers and others looking for a more secluded beach experience. The stretch of coastline is a mixture of undeveloped coastal bluffs and large and expensive residences built on the bluffs and beach, along with sandy beach and views of the open space hillside above in Solstice Canyon and Corral Canyon Park (Exhibit 4). At the far western end of Latigo Beach is Latigo Point, a popular surfing destination. Located directly in the center of this stretch of coastline is the Tivoli Cove condo complex (Exhibit 2), of which Respondent is the HOA.

Respondent's condo complex consists of 104 condos in several buildings built into the hillside above Latigo Beach. The complex also includes a leach field septic system for those condos which was built directly on the beach in front of the condo complex. In front of the leach field septic system is a large revetment. Given that the septic system and revetment were both built on the beach, and that revetments negatively impact beaches, there is often no sandy beach area in front of this revetment. The boulders therefore jut out into the surf, blocking access from one end of the beach to the other. This means that the public, including surfers who want to surf the waves at Latigo Point at the western end of Latigo Beach, are often unable to walk along the beach to reach the surf. The public accessway included in CDP P-77-2312 was specifically designed to address this precise situation, and to ensure that the public still has the ability to move along the coast and to reach the whole beach area.

Permitting History

The impacts of Respondent's revetment upon the beach have been apparent since the early days of the Coastal Commission. The revetment, along with the rest of the condo complex, was built in the mid-1970's and was one of the last projects built without having to comply with Proposition 20, which passed in 1972 and created the Coastal Commission. Because the Coastal Commission did not review this project, the leach field septic system and revetment were allowed to be built on the sandy beach, blocking public access.

In 1978, the Coastal Commission approved a Coastal Development Permit ("CDP") to authorize repairs to the oceanfront septic system that supports Respondent's condo complex. In doing so, the Commission found that the revetment in front of the septic system "totally eliminates [public access] along the shoreline in this location" (Exhibit 10). The public very often would not be able to walk on the sand to the western end of Latigo Beach unless there was a way to get around the revetment that blocks the beach. Therefore, in order to comply with the Coastal Act's public access policies and make the overall project consistent with the Coastal Act, Condition 1 required the permittee to submit revised plans to provide a public "pathway with railing at least four feet in width," and required that "the pathway shall be posted at each end as a public pathway and shall connect the east and west portions of the shoreline adjacent to the revetment." Condition 2 required the recordation of a deed restriction that restricts a four-foot wide portion of Respondent's property along the top of the boulder seawall for a public accessway, and requires that "the pathway be posted at each end as a public pathway and shall connect the east and west portions of the shoreline." Condition 3 also required the deed restriction to allow for public access "up to and including the rock revetment from the mean high tide line" (Exhibit 11).

The recorded deed restriction stated that the "Permittee acknowledges that any violation of this deed restriction shall constitute a violation of the permit" and that "said deed restriction shall remain in full force and effect during the period that said permit...remains effective... and shall bind Permittee and all his successors and assigns" (Exhibit 12). Shortly after the permit was granted, Pepperdine University bought the property for use as student housing, and on December 9, 1980, Pepperdine sent a notice of completion letter to the Commission stating that the public access pathway had been completed and that the public access signs had been installed (Exhibit 13). Pepperdine subsequently sold the property to a developer, but a photo from around June 1984 shows the completed pathway with both sets of stairs (Exhibit 5).

Violation History

However, by 1986, the eastern stairway was destroyed, and the property owner never replaced the stairs to provide the required lateral access. Respondent acquired the property in 1989, and as of 1995, Respondent did at that time did provide signs and access to the one remaining stairway, but never constructed the required stairs on the eastern side of the property as required by the permit (Exhibit 7). This meant that the one remaining stairway did not provide the connection between the two sides of the shoreline as required, and so did not provide access around the revetment, which was the purpose of the permit conditions. However, even this partial access was discontinued in 1996. The public access signs were taken down, and dense iceplant was allowed to grow within the public pathway, which obscured and now completely obstructs it (Exhibit 9).

In addition, since at least 2010, Respondent posted a sign within the deed restricted public access area, next to the only remaining stairway, stating that access was “by permission and subject to the control of owner,” which was not the case, and which gave the clear impression that it was private, and discouraged public access. (Exhibit 8). During the entire time since the permit, Respondent’s HOA members and their guests continued to freely use the remaining, Commission-required western stairway as a private accessway for HOA members to walk from their condos down to the beach, since they had access to their properties and did not need the other staircase to avoid getting trapped on the western end of the beach. This privatization of a Commission-required public accessway by owners of expensive oceanfront property impeded use of the beach by the general public.

Respondent also failed to adequately maintain the stairway as required by their permit, and also did not adequately maintain their revetment, and, as a result, boulders and debris from the revetment, as well as the broken pieces of the stairway, fell off and washed onto the public beach to the east, creating an unpermitted obstruction to access there. However, Respondent did not take action to address the situation on the beach. Today, the debris, including the rock from the revetment and the remains of the broken stairway, still exist on the beach, and the situation has worsened in the past few years. The debris from the revetment has mixed with concrete pieces and other debris that appear to be from the original alignment of Pacific Coast Highway on the bluff above the beach. This has resulted in a large stretch of beach dozens of yards long that is often entirely blocked by revetment boulders, concrete, and other debris (Exhibit 9).

Although the Commission-required public stairs on the eastern side of the Tivoli Property and the public pathway across the revetment do not exist, the western stairway does, but it has been privatized by Respondent. Respondent’s HOA members and guests have used the remaining Commission-required stairway as a private accessway to western end of Latigo Beach, resulting in the loss of the only public access to this end of Latigo Beach. The public access violations here present a real threat of environmental injustice, given the inequality between the local property owners that enjoy easy access to west Latigo Beach as opposed to the public access which is impeded. The City of Malibu is over 84% Non-Hispanic White, as opposed to LA County, which is only 26% Non-Hispanic White.¹ In addition, the per capita income in Malibu is

¹ 2019 census estimates
<https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia,malibucitycalifornia/PST045219>

\$125, 219, while the per-capita income in LA County is \$32,469.² This means that when property owners in the area have exclusive access to a beach by virtue of a combination of their ownership of property nearby and the occluded public access, there are also environmental justice impacts, as the more diverse and less economically privileged communities of LA County are locked out of this area that was required to have public access.

In addition, because the revetment was built in the 1970's as one of the last projects to be built without any Coastal Development Permit, it was not sited according to Coastal Commission policies, much less with regard to sea level rise concerns today. In the meantime, sea levels have risen, increasing the already negative effects that this revetment has caused to this beach. Much more sandy beach existed here in the past, as can be seen at Exhibit 5, and, so long as this revetment remains in place, this beach will only continue to shrink as sea levels rise further, increasing the negative impacts of the revetment and making the public pathway over that much more important.

However, Respondent has worked collaboratively with Commission staff to resolve this violation in a way that would address the loss of public access and address other concerns and liabilities under the Coastal Act. In Commission staff's proposed Consent Cease and Desist Order and Consent Administrative Civil Penalty, Respondent has now agreed to a resolution that would benefit both coastal resources and the public. Respondent has agreed to comply with their permit and the Coastal Act to build the required eastern stairway, install required public access signs, remove unpermitted development obstructing the public pathway, and remove the boulders and other debris that are blocking access on the beach. Respondent has also committed to provide the Commission-required public pathway in perpetuity, as is required by the permit.

In addition, Respondent has also agreed to provide a number of public access amenities that are not required by the original permit, but are intended to mitigate for the years of lost public access there. Respondent has agreed to provide a public shower, public drinking fountain, two benches for public use, and two interpretive signs for the public, and, further, to widen the public pathway from four to five feet. Respondent has agreed to provide these additional public amenities in perpetuity. These amenities will allow the public to more fully enjoy Latigo Beach, which currently has none of these amenities. Further, Respondent has agreed to also remove large concrete pieces blocking access on the beach that appear to be from the historic alignment of Pacific Coast Highway. As can be seen in Exhibit 9, this is a large amount of debris, the removal of which will be a major effort that will greatly increase public access to and the habitat and scenic values of Latigo Beach. Finally, Respondent has agreed to pay an administrative penalty of \$925,000 to address the loss of public access. Commission staff believes that the combined value of the penalty and mitigation is in excess of \$1.2 million. Staff therefore recommends that the Commission approve Consent Cease and Desist Order CCC-20-CD-01 and Consent Administrative Civil Penalty CCC-20-AP-01. The motions can be found on page 7 of this Staff Report.

² Id.

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APPENDIX

Appendix A Proposed Consent Cease and Desist Order and Consent Administrative Penalty Action

EXHIBITS

Exhibit 1	Region Map
Exhibit 2	2010 Properties Aerial Overview
Exhibit 3	2013 Public Pathway Overview
Exhibit 4	Beach Overview
Exhibit 5	Circa 1984 Photo of Public Pathway
Exhibit 6	2004 Photo of Broken Stairway
Exhibit 7	1995 Photo of Partial Access
Exhibit 8	2017 Photo of Sign Blocking Access
Exhibit 9	2019 Photos of Unpermitted Development and other Debris
Exhibit 10	1977 Staff Report for CDP P-77-98
Exhibit 11	CDP P-77-985
Exhibit 12	Deed Restriction Instrument No. 125051
Exhibit 13	1980 Notice of Completion Letter
Exhibit 14	2017 Notice of Violation
Exhibit 15	2019 Notice of Intent to Issue a Cease and Desist Order and Administrative Penalty

I. MOTION AND RESOLUTION

Motion 1: Consent Cease and Desist Order

I move that the Commission issue Consent Cease and Desist Order No. CCC-20-CD-01 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and issuance of the Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC- CCC-20-CD-01, as set forth below, to the party identified therein as the Tivoli HOA, and adopts the findings set forth below on grounds that development has occurred without the requisite coastal development permit, in violation of CDP No. P-77-2312, and in violation of the Coastal Act, and that the requirements of the Order are necessary to ensure compliance with the Coastal Act.

Motion 2: Consent Administrative Civil Penalty Action

I move that the Commission issue Consent Administrative Civil Penalty No. CCC-20-AP-01 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and issuance of the Consent Administrative Civil Penalty. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Administrative Civil Penalty:

The Commission hereby assesses an administrative civil penalty by adopting Consent Administrative Penalty No. CCC-20-AP-01, as set forth below, and adopts the findings set forth below on the grounds that activities and failures to act have occurred on the Properties, as defined in without a coastal development permit, in violation of CDP No. P-77-2312 and in violation of the Coastal Act, and that these activities or failures to act have limited or precluded public access and violated the public access policies of the Coastal Act.

II. HEARING PROCEDURES

A. ADMINISTRATIVE CIVIL PENALTY AND CEASE AND DESIST ORDER

The requisite procedure for imposition of administrative penalties pursuant to Section 30821 of the Coastal Act (Pub. Resources Code, Div. 20) is set forth in Section 30821(b), which specifies that penalties shall be imposed by majority vote of all Commissioners present in the context of a

public hearing in compliance with the requirements of Section 30810 (cease and desist orders), 30811 (restoration orders), or 30812 (recording of notices of violation).

The procedures for a hearing on a Cease and Desist Order pursuant to Section 30810 are outlined in the Commission’s regulations at California Code of Regulations, Title 14 (“14 CCR”) Section 13185. For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where actual controversy exists. The Chair may then recognize other interested persons, after which the Commission typically invites staff to respond to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13185 and 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commission may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner so chooses, any questions proposed by any speaker in the manner noted above.

Finally, the Commission shall determine, by a majority vote of those present and voting, whether to impose administrative penalties. The Commission shall also determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order. Passage of the motions above will result in the issuance of the Consent Cease and Desist Order and Consent Administrative Penalty.

III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-20-CD-01 AND CONSENT ADMINISTRATIVE PENALTY NO. CCC-20-AP-01³

A. DESCRIPTION OF THE PROPERTIES

The Properties are located on Latigo Beach, a stretch of coast in the center of the City of Malibu, in Los Angeles County. Latigo Beach is roughly equidistant from Malibu Pier to the east and Point Dume to the west (Exhibit 1). This beach is known for being quieter and more secluded than other nearby beaches, and is also known for the surfing opportunities available at Latigo Point. Much of the beach is backed by high bluffs, and some areas have residences on or in front

³These findings also hereby incorporate by reference the section “Summary of Staff Recommendation and Findings” at the beginning of this February 13, 2020 staff report (“STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order and Consent Administrative Civil Penalty”) in which these findings appear.

of the bluffs, but large areas of bluffs and beach still remain undeveloped and in public ownership (Exhibit 4). The Tivoli Cove Condominiums, for which Respondent is the HOA, is a 104-unit complex consisting of several large buildings built into the hillside above Latigo Beach (Exhibit 2). Seaward of the condos are Respondent's oceanfront leach field and a revetment (see below for a history of this revetment) situated immediately seaward of the leach field, placed in this location to protect it from wave impact and high tides (Exhibit 3). Because Respondent's revetment has greatly reduced the amount of available sandy beach in front of the revetment, Respondent's property marks a dividing line near the center of Latigo Beach where the revetment often juts out into the surf making it very difficult, if not impossible, to get around the revetment while walking laterally along the beach during much of the year. As discussed in greater detail below, the public pathway as required by the Commission did allow the public to traverse up and over this revetment and reach both ends of the beach, but the public pathway is not currently being provided.

Directly adjacent and to the east/downcoast (the coastline here faces south) of Respondent's revetment, the County of Los Angeles owns two parcels that include parts of the sandy beach (the other parts being public trust tidelands) (Exhibit 2). These LA County properties are managed by LA County Department of Beaches and Harbors. Currently, much of the beach area on the LA County properties is covered with unpermitted boulders and other debris from Respondent's revetment, as well as broken pieces of the stairway required by the Commission, due to Respondent's failure to adequately maintain the revetment or the eastern stairway. Respondent has allowed the boulders, pieces of the stairway, and other debris to fall apart and onto the beach, where they have washed downcoast from the revetment and onto public beach. In addition, there are also large concrete blocks and potentially some pipes on the beach that appear to be debris from Roosevelt Highway, which was the very first iteration of Pacific Coast Highway in the 1920's, and was located just up the bluff from the beach (Exhibit 9).

To the east/downcoast of the LA County properties is private property owned by LSD Holdings, LLC (Exhibit 2). Some of the boulders and debris from the revetment appears to have migrated all the way to the LSD Holdings property as well. Farther east down the beach there is a public access stairway called the Latigo Shore Beach Accessway. This accessway is the closest accessway to the Tivoli Property, and is also close to Dan Blocker Beach, which is further east and downcoast past the Latigo Shore Beach Accessway. Dan Blocker Beach was donated by Lorne Greene and Michael Landon of the TV series Bonanza, in memory of Dan Blocker, who played "Hoss" on the TV show.

To the west/upcoast of Respondent's revetment, Latigo Beach continues. However, there is often no way for the public to walk there on the sand because it is blocked off by the revetment, and the Commission-required public pathway up, and over the revetment is missing. This makes the part of Latigo Beach to the west/upcoast of the boulder seawall difficult, and often times impossible, for the public to reach from the beach. However, Respondent and their guests are still able to easily access the west end of Latigo Beach by walking from their condos, across the leach field, and down the one remaining Commission-required stairway on the west/upcoast side of the revetment (Exhibit 3 and 8).

B. PERMITTING HISTORY

On July 21, 1977, the South Coast Regional Commission approved coastal development permit No. P-77-985, which authorized the then-property owner, Adamson Companies, to activate a reserve leach field and to refresh the existing active leach field for the oceanfront portion of the property now owned by Respondent. (Exhibit 10 and 11). In approving the CDP, the Commission found that the revetment seaward of the leach field restricted public access across the beach. The Commission found that the revetment in front of the septic system “totally eliminates [public access] along the shoreline in this location.” (Exhibit 10). Therefore, the Commission imposed conditions that require the permittee to provide public access across and on top of the revetment.

Condition 1 required the permittee to submit revised plans to provide a public “pathway with railing at least four feet in width,” and requires that “the pathway shall be posted at each end as a public pathway and shall connect the east and west portions of the shoreline adjacent to the revetment.” Condition 2 required the recordation of a deed restriction that restricts a four-foot wide portion of Respondent’s property along the top of the boulder seawall, and requires that “the pathway be posted at each end as a public pathway and shall connect the east and west portions of the shoreline.” Condition 3 required that the deed restricted area also include “lateral public access up to and including the rock revetment from the mean high tide line.” Finally, Condition 4 required the public “pathway to be constructed within 120 days after issuance of the permit.” (Exhibit 11, page 2). Conditions of CDPs run with the land and are binding to all current and future owners of property. The Commission imposed the conditions of the above permit to ensure that, among other things, the authorized development would not impact public access to and along the coast. This obligation is a continuing one and the failure to maintain the public stairs and pathway is directly contrary to the clear intent of the permit conditions to provide public access to an area where access would otherwise be precluded by the revetment and leach field.

On August 24, 1977, Pepperdine University (“Pepperdine”) informed the Commission that it had purchased the property from the Adamson Companies for use as student housing. Pepperdine bought the property after the CDP was approved by the Commission, but prior to completion of the work required by the Commission. As a part of the purchase arrangement, Pepperdine recorded the public access deed restriction and the Adamson Companies constructed the four-foot wide stairways and public access pathway to satisfy the Conditions of the CDP. Pepperdine also applied to the Commission to transfer CDP P-77-985 from the prior property owner to Pepperdine. Pepperdine then executed and recorded the required deed restriction on November 10, 1977 as Instrument No. 77-1250501 (Exhibit 12). On November 25, 1977, the Commission authorized the request to assign the permit to Pepperdine through its approval of P-77-2312. On December 9, 1980, Pepperdine sent a notice of completion letter to the Commission stating that the public access pathway had been completed and that the public access signs had been installed. (Exhibit 13). An aerial photo from around June of 1984 clearly shows both the eastern and western stairways on the Tivoli Property that provided access up the revetment to the public access pathway on top and down the revetment to the other side. (Exhibit 5).

C. VIOLATION HISTORY

In 1983, developer J.D. Stout purchased the Tivoli Property from Pepperdine and began applying to turn what had formerly been student housing into condominiums. Sometime prior to 1986, the eastern stairway required by the CDP was destroyed. J.D. Stout transferred the Tivoli Property to developers Plaza Development Corp. and Malibu Cedars, Ltd., and in 1989, Malibu Cedars converted the apartments into 104 condominiums via CDP 4-84-137, and that same year, the Tivoli Cove Homeowners Association (Respondent) took ownership of the Tivoli Property. Under Respondent's Covenants, Codes, and Restrictions that were recorded in 1989, the condominium owners own an undivided fractional share of the common areas, which includes the area of the revetment that is subject to the CDP conditions. Respondent is responsible for the maintenance of the common areas of the Tivoli Property, including the revetment.

At some point prior to 1995, Respondent built an unpermitted pergola over the public pathway and posted "Coastal Access" signs next to the remaining western/upcoast public access stairway, and along a pathway on top of the revetment that then (and now), led to a dead end at the eastern/downcoast end of the revetment, where the eastern/downcoast stairway was never replaced (Exhibit 7). At some time by 1996, Respondent removed the "Coastal Access" signs and replaced them with several signs intended to deter public access across the eastern stairway, the same area deed restricted for lateral public access. By 2010, Respondent had also installed a sign within the deed restricted area and next to the western/upcoast stairway that stated: "right to pass by permission, and subject to control of owner." (Exhibit 14).

Throughout the 2000's, Respondent also allowed vegetation, or physically planted vegetation, to cover the area where the public pathway is required and used to be located (Exhibit 9). Today, no coastal access signs exist on the site even though the permit requires one at each stairway. In addition, the western stairway, as well as the rest of the public pathway on top of the revetment, appears to be used as a private accessway by HOA members and their guests (Exhibit 3 and 8). Throughout this time, boulders, concrete, and other debris that used to be a part of the revetment in front of the leach field have migrated seaward and east/downcoast onto the public beach, where this debris and material further reduces public access (Exhibit 9). Finally, pieces of debris from the eastern stairway, including concrete pieces and rebar from the eastern stairway that once provided public access, have also migrated seaward and to the east, and now lie broken on areas of publicly owned beach, including the County beach area and block access to areas of sandy beach (Exhibit 9).

Eventually, Commission staff observed the site and began investigating the situation. On September 28, 2017, Commission enforcement staff sent a Notice of Violation letter to Respondent (Exhibit 14). On April 28, 2018, Respondent submitted draft plans to rebuild the missing eastern stairway in the public pathway, but did not remove the unpermitted sign blocking access to the western stairway. On May 7, 2018, Commission staff wrote to Respondent, explaining that, given the need for on-site construction, long term assurance of access and other factors, the case would be elevated to Statewide Enforcement and proposed for the Cease and Desist Order process, and reminded Respondent that the unpermitted sign still existed. Respondent then removed the unpermitted sign, but at this point would not agree to address other liabilities associated with this matter. In addition, in 2019, Commission staff

discovered that a substantial amount of the debris on the beach was actually from Respondent's revetment and broken stairway. Subsequently, in order to move the matter to resolution, on November 26, 2019, the Executive Director sent a Notice of Intent to Issue a Cease and Desist Order and Administrative Penalty ("NOI") to Respondent (Exhibit 15). Prior to and since the NOI was sent, Respondent has worked closely with Commission staff to craft a Consent Order that addresses the non-compliance with the CDP and also benefits coastal resources and the public.

As part of this Consent Order, attached hereto as Appendix A, Respondent has agreed to build and provide the missing eastern stairway, install and provide the required public path and access signs, and to maintain these in the future. Respondent has also agreed to remove unpermitted development obstructing the public pathway. This will ensure that Respondent complies with the conditions of CDP P-77-2312 and the public will once again have the ability to walk on the sand to the public pathway and then reach the western end of Latigo Beach on the other side of the revetment. As mitigation for the past blocked access, Respondent has also agreed to provide and maintain additional public access amenities, to partially mitigate for the previous access losses. Respondent will provide a public shower, drinking fountain, two benches, two interpretive signs for the public that also evince the public nature of the area, and will widen the public pathway from four feet to five feet. Respondent will provide all of these new public amenities in perpetuity along with the public pathway.

Respondent has also agreed to remove boulders and other debris that migrated seaward and to the east/downcoast from Respondent's revetment and onto public beach and other private property. Further, Respondent has also agreed to remove additional unrelated debris blocking access on the beach to the seaward and to the east of the revetment. This includes removal of a substantial amount of large concrete pieces and other debris that appear to be from the historic Roosevelt Highway that formerly passed along the bluff above the beach. Finally, Respondent has also agreed to pay an administrative civil penalty of \$925,000 to address the public access violations on the site, and which can be used to fund additional projects to provide public accessways in Malibu. Combined, Commission staff believes the total value of the mitigation and penalty is \$1.2 million. Commission staff is pleased that Respondent has worked to craft an outcome that improves public access to Latigo Beach and benefits public coastal resources.

D. BASIS FOR ISSUANCE OF CONSENT CEASE AND DESIST ORDER

1) STATUTORY PROVISIONS

The statutory authority for issuance of this Consent Cease and Desist Order is provided in Section 30810 of the Coastal Act, which states, in relevant part:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which

are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

(1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

(2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

(3) The local government or port governing body is a party to the violation.

(b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...

2) FACTUAL SUPPORT FOR STATUTORY ELEMENTS

The Property is located in the city of Malibu within the Coastal Zone. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. "Development" is broadly defined by Section 30106 of the Coastal Act, as well in the Malibu LCP at Section 2.1 of the Implementation Plan, in relevant part as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure...; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...

Unpermitted development, as defined above, has occurred on the Properties without a CDP and inconsistent with a CDP previously issued by the Commission. The undertaking of the above-described actions constitutes "development" as defined by the Coastal Act and the Malibu LCP. Since no CDP or CDP amendment was obtained to authorize this development, the aforementioned development is unpermitted and constitutes a violation of the Coastal Act and the Malibu LCP. It is also inconsistent with conditions of the above-listed permit, and with the deed restriction created pursuant to those conditions.

The Commission continues to have the independent authority to enforce its CDPs, and most of this matter involves violations of a Commission-issued permit. However, for those matters that are not CDP violations, Commission staff and the city of Malibu have coordinated regarding this case, and in a phone call and email dated October 10, 2019, the City has requested that the Commission assume responsibility for enforcement in this matter, including in issuing a Cease and Desist Order, conferring jurisdiction to do so upon the Commission pursuant to Section 30810(a). Section 30810(b) of the Coastal Act states that the Cease and Desist Order may be

subject to terms and conditions that the Commission determines are necessary to ensure compliance with the Coastal Act, including removal of any unpermitted development or material.

(a) The Unpermitted Development is not Consistent with the Terms and Conditions of a Previously Issued Permit (CDP No. P-77-2312)

Although the public pathway was originally built as required by the CDP, the eastern stairway was subsequently destroyed and was never rebuilt by Respondent. In addition, Respondent allowed thick vegetation to cover the public pathway, making it completely inaccessible. The area required to be provided for public access by the CDP has instead been used for private purposes and the public has been excluded by a variety of means. Therefore, for decades, Respondent has not provided the full public pathway as required by the CDP and Deed Restriction. In addition, the public access signs also required by the CDP and Deed Restriction were removed, and then replaced by Respondent with a sign that gave the impression that the area was private, reading “right to pass by permission, and subject to control of owner.” Respondent has also taken additional steps that impeded coastal access, such as obstructing the deed restricted area with unpermitted development including a pergola, vegetation, and signage.

Condition 2 of P-77-2312 states that the applicant shall submit to the Commission:

“2. a deed restriction for recording granting lateral public access on a pathway, at least four feet in width, on the rock revetment [boulder seawall]; the pathway shall be posted at each end as a public pathway and shall connect the east and west portions of the shoreline adjacent to the revetment”

Pepperdine executed and recorded the required deed restriction on November 10, 1977 as Instrument No. 77-1250501.

The Public Access Deed Restriction states:

“...Permittee agrees that there shall be, and hereby is, created the following restriction on the use and enjoyment of said property, to be attached to and become a part of the deed to the Tivoli Property: The Permittee grants lateral public access on a pathway, at least four feet in width, on the rock revetment; the pathway shall be posted at each end as a public pathway and shall connect the east and west portions of the shoreline adjacent to the revetment. Permittee grants lateral public access up to and including the rock revetment from the mean high tide line. Permittee acknowledges that any violation of this deed restriction shall constitute a violation of the permit and shall subject Permittee or any other violator thereof to civil action for violation of the terms of said permit and of the Coastal Act of 1976...

...said deed restriction shall remain in full force and effect during the period that said permit...remains effective...said deed restriction is hereby deemed and agreed by Permittee to be a covenant running with the land, and shall bind Permittee and all his successors and assigns.” (Emphasis added).

The deed restriction clearly states that the owner of the Tivoli Property is required to provide public access in this location, and that a “pathway shall be posted at each end as a public pathway and shall connect the east and west portions of the shoreline.” However, even though the CDP requires that the owner of the Tivoli Property “shall” provide the public pathway and “shall” post signs, Respondent has not provided this required public access. In 1995, Respondent had erected public access signs and provided a public pathway to one end of the revetment, but did not provide the required stairs to the eastern shoreline. Additionally, Respondent built the unpermitted pergola in and around the pathway in a way that further reinforced a privatized impression of the pathway. Moreover, even though the CDP requires Respondent to provide for public access between the beaches on either end of the revetment, the public could not achieve this access because no stairs connected the public pathway to the eastern shoreline.

Today, there are still no signs demarcating the public pathway as required by the CDP. Instead, the entire area, including the western stairway required by the CDP and originally built as part of the public pathway, is accessible only by Respondent members and their guests, and the public is effectively excluded from the entire area deed restricted for lateral public access. This means that, while the public can access the beach to the east of the revetment, the public is often blocked from accessing the beach to the west of the revetment, because when waves and high tides hit the revetment, there is no way to safely traverse it.

In addition, many boulders, pieces of concrete, and other debris, including the pieces of the destroyed eastern stairway, are now located on public beach seaward of and to the east of the revetment. These boulders, concrete, rebar, and other debris also directly block public access, as the public cannot access those areas of sandy beach and are forced to walk around the boulders and concrete pieces. In addition, some of this debris has jagged edges which stick out of the ocean and the sand and could injure unsuspecting beachgoers.

b. The Unpermitted Development at Issue is not Consistent with the Coastal Act’s Access Provisions and Principles of Environmental Justice

The following discussion does not address any required element of Section 30810 of the Coastal Act, and the findings in this section are therefore not essential to the Commission’s ability to issue a cease and desist order. This explication is, however, important for context, and for understanding the totality of impacts associated with the violations and for analyzing factors discussed in Section G, below, and for noting that this proposed resolution would benefit all public users by restoring and improving public access to this area.

Public Resources Code Section 30210 states:

In carrying out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Additionally, Section 30013 provides:

The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission and all public agencies implementing the provisions of this division....

Section 30107.3 defines Environmental Justice as:

... the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

Malibu contains 28 miles of coastline but only just over 10,000 people, while Los Angeles County as a whole contains over 10 million people. Therefore, while Malibu’s 10,000 residents already enjoy much easier access to the city’s beaches, the blocked access here at Latigo Beach gave further advantage to local property owners to the detriment of other potential users.

The public access violations here present issues of environmental justice, given the inequality between the local property owners that enjoy easy access to west Latigo Beach as opposed to the more far-flung public who would have experienced difficulty accessing this area due to the permit violations and unpermitted development. The City of Malibu is over 84% Non-Hispanic White, as opposed to LA County, which is only 26% Non-Hispanic White.⁴ In addition, the per capita income in Malibu is \$125, 219, while the per-capita income in LA County is \$32,469.⁵ This means that when property owners in the area have increased access to a beach by virtue of their ownership of property nearby, there are also potential environmental justice impacts, as the more diverse and less economically advantaged communities of LA County are unable to access the area. Here, while the public pathway has been blocked for decades, the public has been unable to walk down the beach to the western end of Latigo Beach. Further, the one remaining public access stairway had signs that deter access. However, Respondent HOA members and their guests have always been able to easily use the remaining public accessway stairway as a convenient way for them to access the western end of Latigo Beach. This has caused inequality of access and as a result, environmental justice impacts.

Public recreation and the ability for the public to access the beach are major cornerstones of the Coastal Act and are critical provisions to enforce in this difficult-to-access section of coastline in Malibu. According to the City of Malibu Land Use Plan, “Access to many beaches throughout the City... is restricted due to blockage by development including gated communities or private compounds, unopened accessways, and lack of parking.”⁶

The Malibu LCP also recognizes the importance of the fair implementation and enforcement of environmental laws in order to “promote the fair treatment of people of all races, cultures, and

⁴ United State Census Quick Facts, *Los Angeles County, California; Malibu City, California: 2019 Population Estimates*, available at:

<https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia,malibucitycalifornia/PST045219>

⁵ Id.

⁶ Malibu Local Coastal Program; Land Use Plan. Chapter 1 – Introduction (June 2016).

incomes.”⁷ Although no single public accessway to the beach will solve all environmental justice problems related to coastal access, every new accessway that makes it easier for the public to access the coast, especially by making available those accessways already acquired by the State or County for public recreation. Every access path cumulatively improves public access and helps reduce environmental justice concerns.

Finally, it is an important precept of environmental justice in California that all of the public should enjoy access for recreation at coastal areas. Public access and coastal recreation continue to be threatened by private development, illegal encroachments, and other restrictions on beach or coastal access. While coastal property owners benefit from private development fronting the beach and ocean, those that do not have these means and/or live far from the coast receive the burdens associated therewith. Securing open public access for all citizens provides low-cost, outdoor recreation that can improve the overall quality of life for all of the public. The unpermitted development at issue in this matter is therefore inconsistent with the public access policies of the Coastal Act and City of Malibu LCP.

c. Sea Level Rise Will Only Increase the Access Impacts

In addition, the revetment was built in the 1970’s as one of the last projects to be built without any Coastal Development Permit, and was therefore not sited according to Coastal Commission policies, much less with regard to sea level rise concerns now. In the meantime, sea levels have risen, increasing the already negative effects that this revetment has caused to this beach.⁸ A June 1984 aerial shows much more sandy beach in this area than exists today (Exhibit 5). Therefore, the public pathway only becomes more crucial as the revetment’s negative impacts on Latigo Beach continue to increase. As sea levels rise, impacts to public access, and environmental justice impacts, will only increase here.

d. The Unpermitted Development at Issue is not Consistent with the Coastal Act or the City of Malibu LCP

The Coastal Commission has a statutory mission to maximize public access and recreational opportunities to and along the coast.

Section 30210 of the Coastal Act, which is also incorporated in the City of Malibu’s LCP at Section 2.B of the Land Use Plan, states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

⁷ Malibu LCP, Chapter 1.D

⁸ Sea level rise is causing beaches to move inland; see the Commission’s Adopted Sea Level Rise Policy Guidance Document (2015).

In addition, Section 30211 of the Coastal Act, which is also incorporated in the City of Malibu’s LCP at Section 2.B of the Land Use Plan, states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Also, Section 2.86(j)(3) of the Commission-certified Malibu Land Use Plan (“LUP”) requires that vertical accessways be opened:

Improve and open existing vertical accessway and OTD.

The vertical accessway over the revetment to west Latigo Beach is required to be open in order to comply with both the CDP and the Malibu LCP requirements. Maximizing public access to and along the coast and maximizing public recreational opportunities in the coastal zone are some of the highest priorities for the Commission, are specifically protected in the Coastal Act and the Malibu LCP, and are stated as basic goals of the state for the Coastal Zone in Public Resources Code Section 30001.5. In this case, the placement of the unpermitted development in the public pathway is “development” that adversely affects public access and recreation and is a violation of the permit conditions specifically imposed to promote and protect public access and of the Coastal Act and the Malibu LCP public access and recreation provisions more generally. Thus, the violations of the Coastal Act are impacting public access and remain inconsistent with Coastal Act provisions on public access, including Sections 30210 and 30211, as well as the City of Malibu LCP’s public access policies. Therefore, Commission staff recommends that the Commission issue Consent Cease and Desist Order No. CCC-20-CD-01, attached hereto as Appendix A of this staff report.

F. BASIS FOR ISSUANCE OF CONSENT ADMINISTRATIVE PENALTIES

1) STATUTORY PROVISIONS

The statutory authority for imposition of administrative penalties is provided in the Coastal Act in Public Resources Code Section 30821,⁹ which states, in relevant part:

(a) In addition to any other penalties imposed pursuant to this division, a person, including a landowner, who is in violation of the public access provisions of this division is subject to an administrative civil penalty that may be imposed by the commission in an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation. The administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.

⁹ All section references in this section, III.C, are to the California Public Resources Code, and as such, to the Coastal Act, unless otherwise indicated.

In addition, sections 30820 and 30822 create potential civil liability for violations of the Coastal Act more generally. Section 30820(b) also provides for daily penalties, as follows:

Any person who performs or undertakes development that is in violation of [the Coastal Act] or that is inconsistent with any coastal development permit previously issued by the commission . . . , when the person intentionally and knowingly performs or undertakes the development in violation of this division or inconsistent with any previously issued coastal development permit, may, in addition to any other penalties, be civilly liable . . . in an amount which shall not be less than one thousand dollars (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.

Section 30822 states:

Where a person has intentionally and knowingly violated any provision of this division or any order issued pursuant to this division, the commission may maintain an action, in addition to Section 30803 or 30805, for exemplary damages and may recover an award, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

Through the proposed settlement, Respondent has agreed to resolve its financial liabilities under all of these sections of the Coastal Act.

2) FACTUAL SUPPORT FOR STATUTORY ELEMENTS

a. Section 30821(h) Notice

Under section 30821(h) of the Coastal Act, under certain circumstances, a party who is in violation of the public access provisions of the Coastal Act can nevertheless avoid imposition of administrative penalties by correcting the violation within 30 days of receiving written notification from the Commission regarding the violation. This “cure” provision of Section 30821(h) is inapplicable to the matter at hand. A criterion for 30821(h)’s cure provision to apply is that the violation must not be a violation of permit conditions. As discussed above, the violations at issue here are violations of the CDP Conditions. As a cure under 30821(h) is not available for permit violations, that remedy is not available here.

b. Section 30821(f):

Section 30821(f) of the Coastal Act states:

(f) In enacting this section, it is the intent of the Legislature to ensure that unintentional, minor violations of this division that only cause de minimis harm will not lead to the imposition of administrative penalties if the violator has acted expeditiously to correct the violation.

Section 30821(f) is also inapplicable in this case. As discussed above and more fully below, the failure to comply with the Conditions of the CDP is significant both because it was an essential

access requirement of the CDP, and because loss of access for decades is an extremely significant harm under the Coastal Act. Therefore, the violation cannot be considered to have resulted in “de minimis” harm to the public.

c. Penalty Amount

Pursuant to Section 30821(a) of the Coastal Act, the Commission may impose penalties in “an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation.” Section 30820(b) authorizes civil penalties that “shall not be less than one thousand dollars (\$1,000), [and] not more than fifteen thousand dollars (\$15,000), per day for each day in which each violation persists.” Therefore, the Commission may authorize penalties in a range up to \$11,250 per day for each violation. Section 30821(a) sets forth the time for which the penalty may be collected by specifying that the “administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.”

Commission staff has discovered records that state that the eastern stairway of the public pathway was missing by 1986, and has yet to be replaced. The violations occurred during the entire statutory period of five years of administrative penalties, however, in this case, because Respondent has agreed to amicably resolve this matter, and to provide public access amenities in perpetuity, which will greatly benefit the public at Latigo Beach, as well as pay \$925,000, Commission staff recommends that the Commission approve the proposed resolution contained in the proposed Consent Cease and Desist Order and Consent Administrative Penalty.

For background, below, we provide an analysis of the factors referenced in Section 30821(c) as they apply to this access violation. Section 30821(c), in determining the amount of administrative penalty to impose, incorporates by reference the preexisting penalty factors for all violations and states “the commission shall take into account the factors set forth in subdivision (c) of Section 30820.”

Section 30820(c) states:

In determining the amount of civil liability, the following factors shall be considered:

- (1) The nature, circumstance, extent, and gravity of the violation.*
- (2) Whether the violation is susceptible to restoration or other remedial measures.*
- (3) The sensitivity of the resource affected by the violation.*
- (4) The cost to the state of bringing the action.*
- (5) With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.*

Section 30820(c)(1): The nature, circumstance, extent, and gravity of the violation;

Applying the factors of Section 30820(c)(1), the violation at hand should warrant the imposition of substantial civil liability; violations have persisted on the Property for many years and the violations have meant that the public has been effectively denied access to this area of the coast. Often, the entire western part of Latigo Beach has been difficult if not impossible to reach by the public traveling along the sand, while Respondent benefited from this privatization. In addition, boulders and other debris from the revetment migrated onto the eastern part of Latigo Beach, blocking access there, and posing a hazard as jagged rock and rebar stuck out of the sand.

While Respondent did not provide the public pathway and posted a sign adjacent to the remaining stairway that had the effect of deterring public access, Respondent still used the remaining Commission-required stairway to access west Latigo Beach. This blocked access therefore disproportionately affected those who cannot afford to buy a condominium unit at Respondent's condo complex. Therefore, the above factor weighs in favor of a significant penalty.

Section 30820(c)(2): Whether the violation is susceptible to restoration or other remedial measures.

With regards to 30820(c)(2), the violation can be remedied going forward and, as the violation is susceptible to remediation in the future, and compliance with this Consent Order moving forward will ensure that adequate public access is maintained at this location. For example, under the proposed Consent Order, the missing eastern stairway and the public access signs will be provided once again. However, there are years of public access losses that can never be recovered, and many people have been denied public access to the coast that they cannot now regain, and therefore, a moderate penalty is warranted under this subsection.

Section 30820(c)(3): The sensitivity of the resource affected by the violation.

The resource affected by the violation, access, is an oft threatened and important resource across the State. Ensuring public access to all of California's beaches is promised to the people by the State Constitution and is essential for implementing the Coastal Act, and this violation blocked many members of the public from reaching the western end of Latigo Beach, while Respondent benefited from the Commission-required public stairway and restricted it for exclusively private use. At Latigo Beach in particular, the public pathway over the revetment is a sensitive resource because it is the only way to access west Latigo Beach from the sand for much of the time, and is therefore very important for access on this beach. In addition, there are relatively few open accessways in this part of Malibu, making this beach even more important. Therefore, an accessible beach here is a relatively sensitive resource in terms of access, as opposed to places with a public accessway every block, for example. Thus, a moderate to high penalty is warranted under this factor.

Section 30820(c)(4): The cost to the state of bringing the action;

The costs to the state have not been as significant as many other cases. While Commission staff has spent considerable time primarily in the form of meetings and negotiations with Respondent, this has taken much less time relative to many of our other cases. Further, while Respondent refused to address all their associated liabilities at first, after the Notice of Intent was sent in November 2019, Respondent has diligently and quickly worked to resolve this matter. While working to craft an amicable resolution also took staff time, it has had benefits. This has allowed the parties to resolve the violation without litigation, and to reach a settlement that includes injunctive measures that would not be as readily available without this settlement, such as providing public access amenities like a shower, drinking fountain and benches not otherwise available at Latigo Beach, and removing concrete blocks and other debris on the beach that appear to be from the historic Pacific Coast Highway alignment. Taking all of this into account for calculating the penalty amount, the immediacy with which Respondent has most recently agreed to comply with the Coastal Act and engage in the resolution process weighs towards a reduction from a more substantial penalty allowed under the statute.

Section 30820(5): With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.

With regard to 30820(c)(5), Respondent has a history of violations of the public access provisions of the CDP. This violation appears to have begun in the mid-1980's, and has not been fully addressed since. While Respondent did provide access signs in 1995, which provided access to the one remaining stairway, the public pathway was not fully usable due to the lack of the eastern stairway, and by the lack of maintenance and the inability of the public to use the area where the required walkway was to be. In addition, Respondent's provision of these access signs in 1995 shows that, in addition to Respondent's awareness via the recorded deed restriction, Respondent was well aware of its responsibilities to provide access, and did not provide such access at that time.

On the other hand, when Respondent received the Notice of Violation letter in 2017, Respondent immediately committed to fully complying with the CDP and rebuilding the stairway, and to providing access in this location. Respondent has demonstrated a dedication to ensure that public access will be restored, and has not wavered from the goal of reaching an amicable resolution where the public would enjoy full access to the public pathway. Respondent has been much more amenable and helpful than most alleged violators in this regard, and Commission staff appreciates reaching the proposed resolution here in a timely manner.

Aggregating these factors, Commission staff concludes that a significant but not extreme penalty is justified here. Staff recommends the Commission exercise its prosecutorial discretion and adopt staff's recommendation for the imposition of a monetary penalty in the amount of \$925,000, and in lieu of the remainder of the penalty, the requirement to provide additional public amenities including a shower, a drinking fountain, two benches, two interpretive signs, and a widening of the pathway, in addition to cleaning up a substantial amount of large concrete blocks on the beach. Combined, Commission staff believes that this agreement provides a value to the public in excess of \$1.2 million.

Therefore, staff recommends that the Commission issue the Consent Administrative Penalty CC-19-AP-01-A attached as **Appendix A** of this staff report.

G. CONSENT ORDER IS CONSISTENT WITH CHAPTER 3 OF THE COASTAL ACT

The Consent Order, attached to this staff report as Appendix A, is consistent with the resource protection policies found in Chapter 3 of the Coastal Act and the corresponding policies of the Malibu LCP. This Consent Order requires and authorizes Respondent to, among other things, cease and desist from conducting any further unpermitted development on the Properties stemming from actions or inactions of Respondent that result in a change in the intensity or density of use of the Property, particularly in relation to the actions or inactions that decrease the public's ability to access the coast, and to perform other public access improvements as described in further detail, above. Failure to provide the required public access would result in the continued loss of public access, inconsistent with the resource protection policies of the Coastal Act.

Therefore, as required by Section 30810(b), the terms and conditions of this Consent Order are necessary to ensure compliance with the Chapter 3 policies of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that issuance of this Consent Order to compel compliance with the CDP and implementation of this Consent Order is exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 et seq., for the following reasons: first, the CEQA statute (section 21084) provides for the identification of “classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA].” The CEQA Guidelines (which, like the Commission’s regulations, are codified in 14 CCR) provide the list of such projects, which are known as “categorical exemptions,” in Article 19 (14 CCR §§ 15300 et seq.). Because this is an enforcement action designed to protect and restore public access to the coast: the exemption applies here covering enforcement actions by regulatory agencies (14 CCR § 15321).

Secondly, although the CEQA Guidelines provide for exceptions to the application of these categorical exemptions (14 CCR § 15300.2), the Commission finds that none of those exceptions applies here. Section 15300.2(c), in particular, states that:

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

CEQA defines the phrase “significant effect on the environment” (in Section 21068) to mean “a substantial, or potentially substantial, adverse change in the environment.” The Consent Order is designed to protect the environment, and it contains provisions to ensure, and to allow the Executive Director to ensure, that it is implemented in a manner that will protect the

environment. Thus, this action will not have any significant effect on the environment within the meaning of CEQA, and the exception to the categorical exemptions listed in 14 CCR section 15300.2(c) does not apply. An independent but equally sufficient reason why that exception in section 15300.2(c) does not apply is that this case does not involve any “unusual circumstances” within the meaning of that section, in that it has no significant feature that would distinguish it from other activities in the exempt classes listed above. This case is a typical Commission enforcement action to protect and restore the environment and natural resources.

In sum, given the nature of this matter as an enforcement action to protect and restore public access, and since there is no reasonable possibility that it will result in any significant adverse change in the environment, it is categorically exempt from CEQA.

I. SUMMARY OF FINDINGS OF FACT

1. The properties that are the subject of this Consent Order are property owned by Respondent at Lot 1 of Tract Map 37848, City of Malibu; property owned by the County of Los Angeles (Assessors’ Parcel Numbers 4460-019-902 and 4460-019-903); property owned by LSD Holdings, LLC (APN 4460-019-024); and potentially on public trust tidelands. All of the properties are located within the Coastal Zone.
2. In its approval of CDP No. P-77-2312, the Commission included four Conditions in order to ensure the project would comply with, among other things, the public access policies of the Coastal Act, and therefore required that the property owner provide a public pathway up and over the revetment in order to access the beach on the other side, complete with two stairways with railing, and public access signs.
3. Tivoli Cove Homeowners Association is the current owner of the property upon which the revetment is located and over which the public access deed restricted lies, included upon which the public pathway required by CDP P-77-2312 is located.
4. Unpermitted Development as defined above occurred without a CDP and inconsistent with CDP P-77-2312, the Malibu LCP, and the Coastal Act has occurred on the Property and, therefore, the jurisdictional requirement for the Commission to issue a cease and desist order has been met.
5. The statutory authority for imposition of administrative penalties is provided in Section 30821 of the Coastal Act. The criteria for imposition of administrative civil penalties pursuant to Section 30821 of the Coastal Act have been met in this case. Sections 30820 and 30822 of the Coastal Act create potential civil liability for violations of the Coastal Act more generally.
6. The parties agree that all jurisdictional and procedural requirements for issuance of and enforcement of this Consent Order, including Section 13187 of the Commission’s regulations, have been met.

7. The work to be performed under this Consent Order, if completed in compliance with the Consent Order and the plan(s) required therein, will be consistent with Chapter 3 of the Coastal Act.
8. The Respondent has agreed to assume the obligations of this Consent Order, which settles all Coastal Act violations related to the specific violations described in #4, above.
10. As called for in Section 30821(c), the Commission has considered and taken into account the factors in Section 30820(c) in determining the amount of administrative civil penalty to impose. The penalty agreed to in this settlement is an appropriate amount when considering those factors.